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NO. 10 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF LOUISIANA,
Defendant

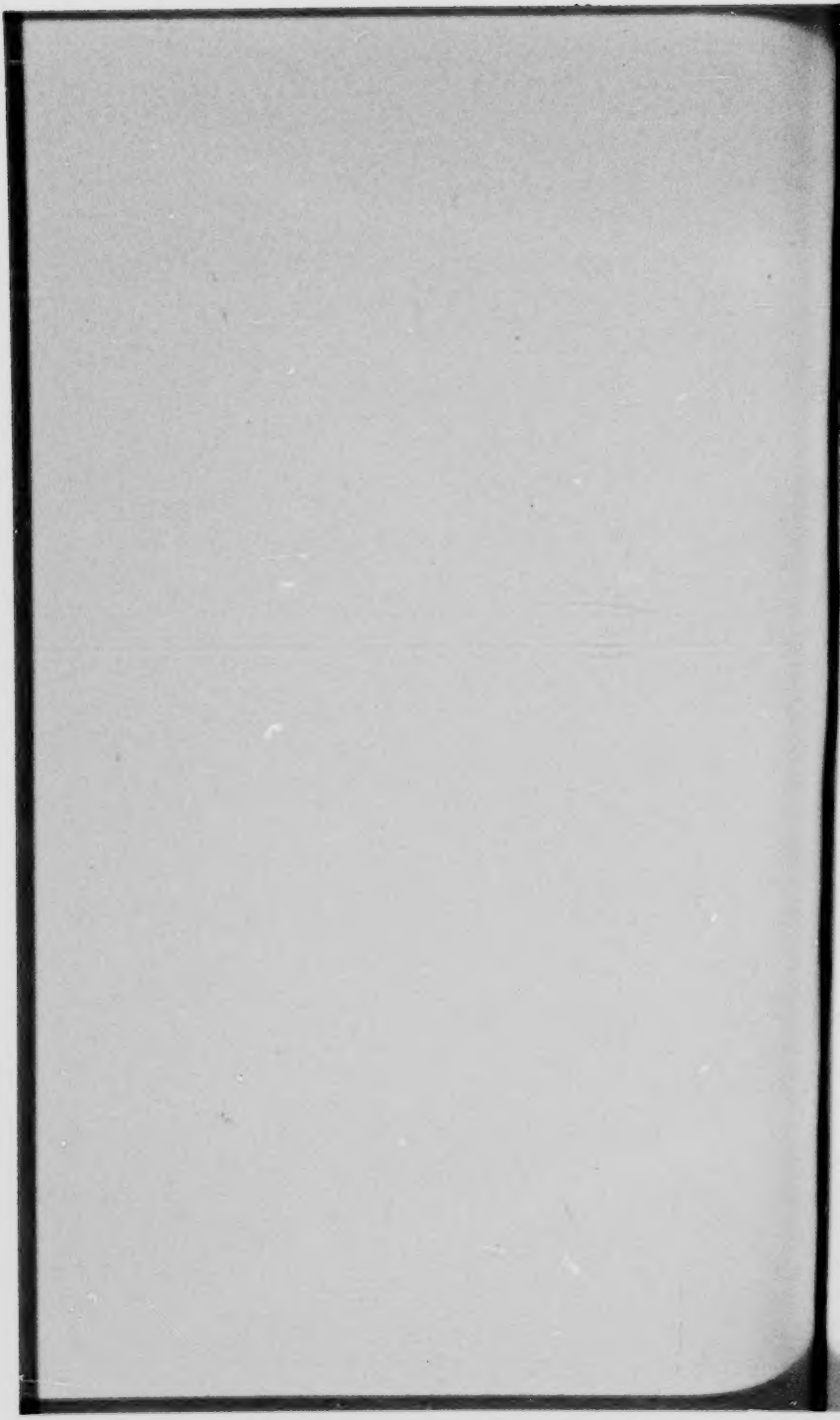
MOTION FOR LEAVE TO FILE AND BRIEF OF THE STATE OF TEXAS, AMICUS CURIAE

WILL WILSON
Attorney General of Texas

JAMES H. ROGERS
Assistant Attorney General
Capitol Station
Austin, Texas

PRICE DANIEL
Governor of Texas

J. CHRIS DOUGHERTY
Austin, Texas
Of Counsel



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STATE OF LOUISIANA,
Defendant

MOTION FOR LEAVE TO FILE

The State of Texas, by its Attorney General, asks leave of the Court to file its Brief, Amicus Curiae, in the above entitled and numbered cause.

WILL WILSON
Attorney General of Texas

JAMES H. ROGERS
Assistant Attorney General

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BRIEF FOR THE STATE OF TEXAS, AMICUS CURIAE

PURPOSE OF THIS BRIEF

The sole purpose of this brief is to urge that in this case the Court's decision as to the extent of State and National boundaries in the Gulf of Mexico should be limited to the State of Louisiana.

Texas is not a party to this proceeding. However, Louisiana has injected the Texas three league boundary in support of its own claim and the reply brief filed by the Attorney General of the United States has contradicted the previous position of our Nation with respect to

the Texas boundary. Neither party has fully developed the Texas case, and a finding with respect to Texas is wholly unnecessary to a decision in this case.

The extent of the Gulfward boundary of Louisiana at the time that State entered the Union (or as heretofore approved by Congress) is the only issue which requires the determination of this Court. It is to that boundary, and no other, that the Submerged Lands Act quitclaimed the subsoil and sea bed of the Gulf to the State of Louisiana.

Louisiana's Gulfward boundary as a territory and a State was fixed long before Texas won its independence and established its *three league* boundary in 1836. Obviously, the extent of the Texas boundary is in no way controlling as to Louisiana.

It is unnecessary in this case to decide the issue of whether our Nation has always and exclusively followed a general three mile rule as to the limit of seaward boundaries without giving other affected States an opportunity to be heard. The United States Congress recognized that exceptions exist in the Gulf of Mexico when it provided in Section 2(b) of the Submerged Lands Act (67 Stat. 79) that the term "boundaries" shall not be interpreted as

> "extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than *three marine leagues into the Gulf of Mexico.*"

Again in Section 4 of the same Act the Congress provided:

> ". . . Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary *beyond three geographical miles* if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

The question in this case is whether Louisiana's boundary is an exception to the three mile rule generally adhered to by the United States. The answer does not require a decision which would apply to Texas or in any manner prejudice or question Texas' long recognized *three league* boundary as a permissable and recognized exception.

There is an abundance of evidence and law not now before this Court which will show without question that Texas' *three league* boundary in the Gulf of Mexico existed before and after annexation. In fact, the outstanding exception to its general three mile rule occurred when the United States annexed the independent Republic of Texas, a nation which already had an established and recognized Gulfward boundary of three leagues, all of which was added to the Union after a written promise from the President of the United States to defend that boundary.

It is improper and impossible for Texas to develop all of its case in an amicus curiae brief. Thus, the limited purpose here is to acquaint the Court briefly with the

nature of the Texas case and to suggest that any application of a general rule of seaward boundaries should be with recognition of the exception applicable to Texas or at least without prejudicing the case of Texas in a proceeding to which the State is not a party.

HISTORY OF THE TEXAS BOUNDARY

For 120 years, first as an independent nation and then as a State, Texas' boundary in the Gulf of Mexico has been fixed at three leagues (10.486 statute miles; 9 nautical miles) from shore. That is the extent to which Texas has continuously exercised its jurisdiction and enforced its laws.

The Texas Boundary Act was enacted by the First Congress of the Republic of Texas on December 19, 1836, and the applicable portion reads as follows:

> "Sec. 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled, That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico *three leagues* from land, to the mouth of the Rio Grande, thence up the principal stream," etc.[1]

The Gulfward boundary of three leagues thus established from its inception has been recognized on many occasions by the United States. The evidence of such rec-

[1] 1 Laws, Republic of Texas 133; 1 Gammel's Laws of Texas 1193-1194.

ognition consists, in part, of the Resolution of the United States Senate adopted March 2, 1837, recognizing the independence of the Republic of Texas,[2] the joint resolution passed by the Congress of the United States on March 1, 1845, providing for the annexation of Texas,[3] the Treaty of Guadalupe Hidalgo in 1848,[4] and the Gadsden Treaty (1853).[5]

The Texas Boundary Act was read to the United States Senate before the resolution was adopted recognizing Texas' independence in 1837 and again before adoption of the annexation resolution.[6] Before recognition, on December 22, 1836, President Andrew Jackson said: "The title of Texas to the territory she claims is identified with her independence . . . ."[7]

While annexation was being negotiated, officials of the Republic of Texas insisted upon assurances from the United States that it would defend the boundaries already established and maintained for 9 years by the Republic of Texas. The reply was a solemn promise from the President of the United States, James K. Polk, by letter dated June 15, 1845, to Andrew Donelson, U. S. Charge d'Affaires, who was negotiating with Texas officials, in which President Polk said:

> "Of course, I would maintain the Texian title to the extent which she claims it to be. . . ."[8]

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[2] Cong. Globe, 24th Cong., 2nd Sess. 270.
[3] 5 Stat. 797.
[4] 9 Stat. 922-926.
[5] Cong. Globe, 33rd Cong., 1st Sess. 1568.
[6] Appendix to the Cong. Globe, 28th Cong. 1st Sess. 549.
[7] Cong. Globe, 24th Cong., 2nd Sess. 45.
[8] The Papers of President ames K. Polk, vol. 72, p. 6767, Library of Congress.

The United States kept this agreement by fighting the War with Mexico and upheld the Texas three league boundary in the Treaty of Guadalupe Hidalgo which ended the war. Article 5 of that treaty contains this language:

> "The boundary between the two Republics shall commence in the Gulf of Mexico, *three leagues* from land, opposite the mouth of the Rio Grande . . ."[9]

Current "presumptions" and "assumptions" of the State and Justice Departments that this three league distance was inserted not as a real boundary but just to help prevent smuggling do not accord with the facts of history. Federal and State Archives contain the truth, and it can and will be shown this Court if ever necessary. Evidence will show conclusively that the Legislature of Texas and members of the United States Senate insisted on the Treaty following the language of the Texas Boundary Act of 1836, and this is exactly what Secretary of State Buchanan instructed our negotiator to do.[10]

The three league boundary line was actually surveyed in the Gulf and marked as the international boundary between the United States and Mexico in 1911. A reproduction of a map thereof, published by the State Department itself, appears opposite this page.

To the foregoing could be added a host of diplomatic correspondence, records of treaty negotiations, State and Federal Statutes, legislative histories and court deci-

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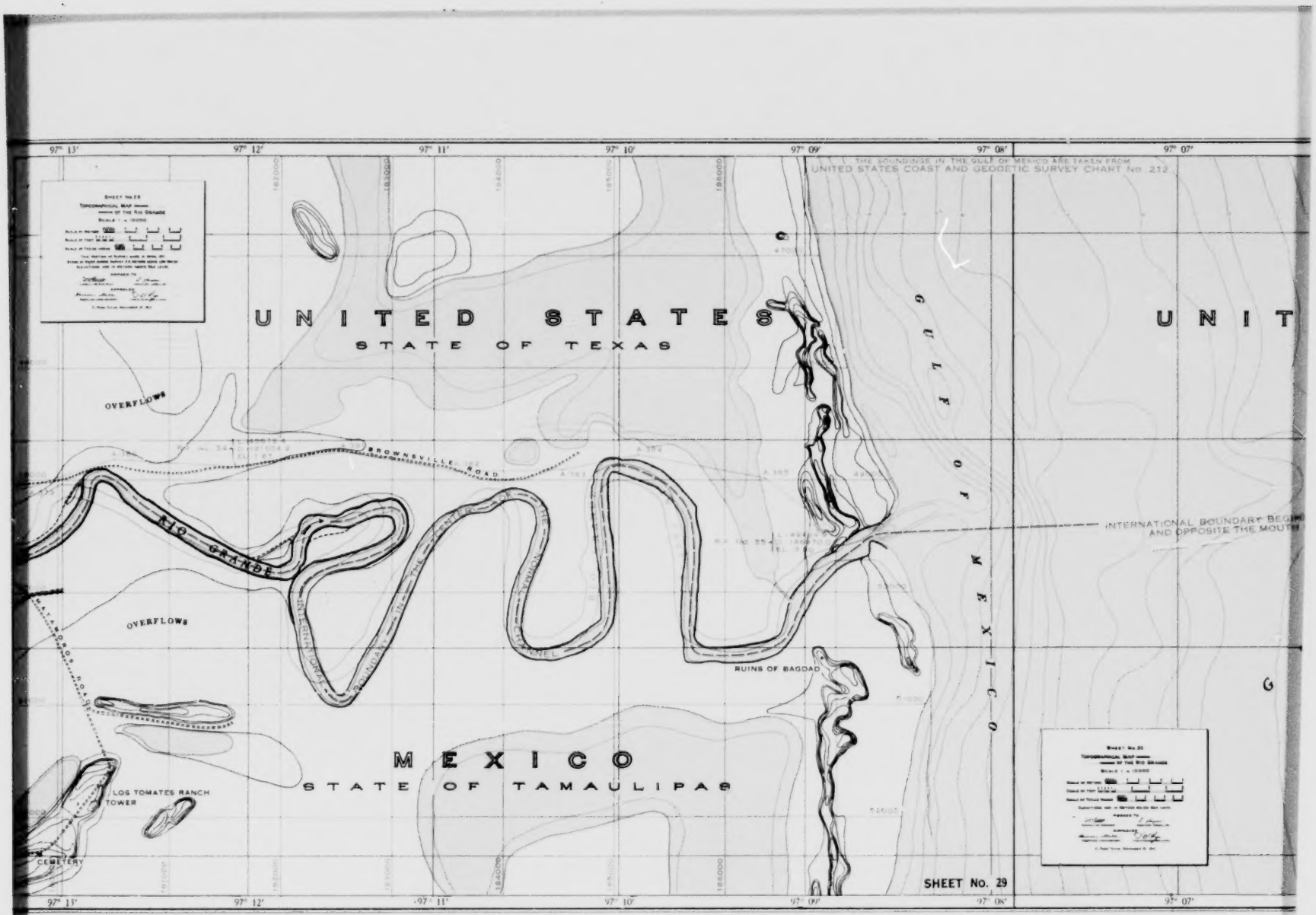
[9] 9 Stat. 922-926.
[10] Dept. State, 16 instructions, Mexico, 46, 62.



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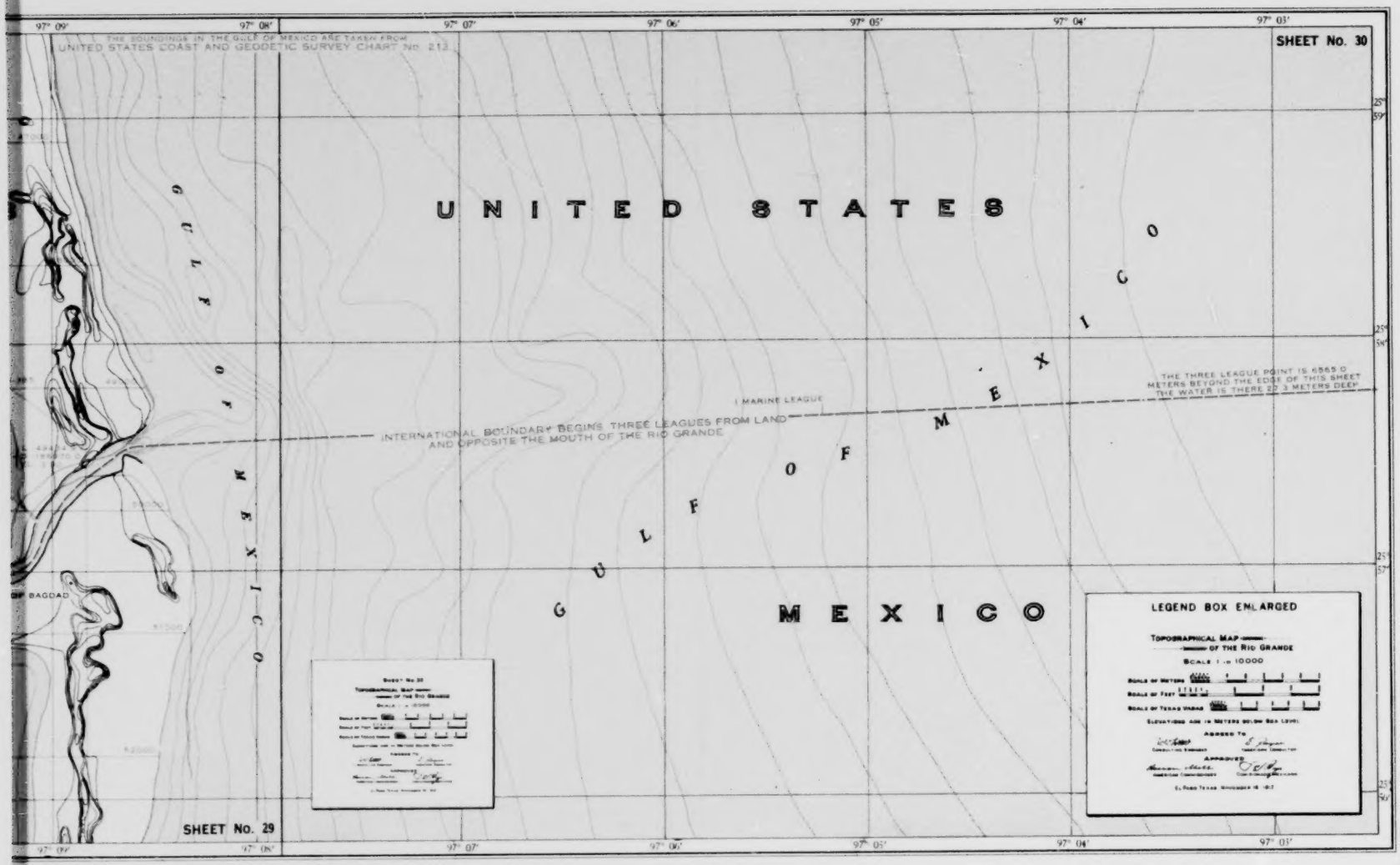
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on Field Operations of 1910-1911. American Section" (Department
913).

sions, all leading to the compelling conclusion that the National and State boundary of Texas historically and consistently has been at the line of three marine leagues in the Gulf of Mexico. So far as the Federal Government is concerned, nothing has occurred to diminish or change that boundary."[11]

President Eisenhower has on numerous occasions recognized the three league boundary of Texas. In a speech in Houston, Texas, on October 14, 1952, Mr. Eisenhower gave his full support to the Submerged Lands Bill, and said with specific reference to Texas:

> "And so the State of Texas paid off the ten million dollar debt of the Republic. It kept its two hundred million acres of land—including the submerged area extending *three marine leagues* into the Gulf of Mexico."

The sepcific issue was raised by Senator Anderson and 24 other Senators in a letter to President Eisenhower while the Submerged Lands Bill was pending in the Senate in 1953, in which they complained that his leaders in Congress were supporting a bill that would "set up State sovereignty within a 3-mile belt for every coastal State, except Florida and Texas, where the belt would be 10½ miles" (3 leagues). The Senators went on to say:

"We would like to know, for instance, whether

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[11] The holding of this Court in *United States v. Texas* does not deny the existence of the three league boundary in the Gulf of Mexico. 339 U. S. 707. On the contrary, the Court said: "Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held." (717).

> Congress has, in fact, 'heretofore' approved any boundaries in the sea greater than 3 miles for any State, and if so, what State and what boundary?" (Cong. Rec. April 22, 1953, p. 3532)

President Eisenhower replied to this letter on April 24, 1953. (Cong. Rec. April 25, 1953, p. 3865) He gave his complete support to the pending measure as worded, and took occasion to make specific reference to Texas by quoting from his Houston speech as follows:

> "And so the State of Texas paid off the ten million dollar debt of the Republic. It kept its two hundred million acres of land—including the submerged area extending *three marine leagues* seaward into the Gulf of Mexico."

The President went on to say:

> "My position is the same today. It was further amplified by the Administration representatives in the hearings before the Senate and your Committees considering the legislation."

The administration representatives referred to by President Eisenhower were Secretary of Interior Douglas McKay and Attorney General Herbert Brownell, both of whom testified that they recognized that three leagues was the historic boundary of Texas and the West Coast of Florida and that the Submerged Lands Bill would extend to such distance in those two instances. Senator McKay testified:

> "I mean the 3-mile limit as far as my State is concerned. I mean 3 leagues as far as yours, sir, that is, Texas and Florida. . . . Senator, I think

> they are all alike except for two States, Florida and Texas. I believe the other are all 3 miles."[12]

Attorney General Brownell recommended that the Senate Committee draw the historic boundaries on a map and attach it as a part of the bill. Upon being asked at what distance he would draw the line for the coastal states, he said:

> "Our thought generally, Senator, without going into great detail, is that this line would be 3 miles out, except in the case of Texas and the west coast of Florida."[13]

He testified further as follows:

> "Attorney General Brownell. In order that there may be no misunderstanding, generally speaking, what we have in mind is the 3-mile line, except for the coasts of Texas and the west coast of Florida, where *3 leagues* would generally prevail.
>
> "Senator Holland. The reason you make those two exceptions is because it is your understanding that the constitutions of Texas and Florida provide that the 3-league off-shore limit is the limit clear across Texas and along the west coast of Florida in the Gulf of Mexico?

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[12] Hearings on SJR 13, Senate Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess., 529, 535. Secretary McKay also testified to the House Committee: "In most cases of these States, it is 2 miles to sea, except in Texas and Florida, where it is, of course, 3 leagues." Hearings before Subcommittee No. 1, House Juidicary Committee, 83rd Cong., 1st Sess., 181.

[13] Hearingson SJR 13, Senate Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess., 931.

"Attorney General Brownell. That, plus the action of Congress in relation to it.

"Senator Holland. That, plus the action of Congress approving those two constitutions?

"Attorney General Brownell. Yes."[14]

Even the State Department's representative at these hearings acknowledged the three league boundaries of Texas and the West Coast of Florida to be exceptions to the 3 mile rule generally adhered to by the United States. Mr. Jack B. Tate, Deputy Legal Adviser, Department of State, testified as follows:

"Senator Daniel. As to this matter of Texas, you do recognize, sir, that some nations of the world have claimed more than 3 miles as their limit of territorial waters?

"Mr. Tate. That is right.

"Senator Daniel. As a matter of fact, I have just counted them, and find, beginning at page 511 of the hearings on Senate Joint Resolution 20 in 1951, that there are 16 nations of the world which have for a great number of years claimed wider territorial belts than 3 miles.

"Mr. Tate. I would say there are at least 16. . . .

* * * *

"Senator Daniel. We were admitted in accordance with the boundaries that were established at

[14] Id., 957.

that time. There was no protest against our 3-league boundary by the United States, was there?

"Mr. Tate. Not that I know of.

"Senator Daniel. Then in 1848, after the War with Mexico, the United States entered into the Treaty of Guadalupe Hidalgo. All the records before this committee show that the Secretary of State told our negotiators to follow the boundaries of Texas as set up by the Republic of Texas and maintained for 9 years. We find in the Treaty of Guadalupe Hidalgo these words, quoting now from the treaty:

" 'The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from land opposite the mouth of the Rio Grande.'

"You are familiar with that, sir?

"Mr. Tate. That is right.

"Senator Daniel. Then we do have the United States by treaty recognizing a boundary between Mexico and the United States as being the same boundary that Texas claimed as an independent nation three leagues out in the Gulf, is that not correct?

"Mr. Tate. At that point; yes.

"Senator Daniel. That is correct, is it not?

"Mr. Tate. That is right. . . .

"Senator Daniel. So there at least are two instances in which our Nation by official action has recognized boundaries in the Gulf of Mexico a greater distance than 3 miles from shore; is that not correct, sir?

"Mr. Tate. I think so; yes."[13]

"Senator Daniel. As to the State of Florida, its constitution, after the Civil War, provided that on the Gulf coast side, that is the shallow-water side, its boundary should go out 3 leagues from shore, and that was approved by the United States Congress. You are familiar with that, are you not?

"Mr. Tate. I understand that to be true; yes.

RECOGNITION BY CONGRESS

If the need and opportunity arises, Texas can show recognition of its three league Gulfward boundary by the Congress on at least ten occasions since 1836. For the limited purposes of this brief, reference is made only to the latest clear recognition in the Submerged Lands Act (P. L. 31, 67 Stat. 79) that exceptions to this country's general 3 mile rule have existed and do now exist.

As previously stated, the Act itself expressly recognizes territorial rights beyond three miles into the Gulf of Mexico. For example, a portion of the definition of the term "lands beneath navigable waters" contained in Section 2(a) of the Act includes

"all lands permanently or periodically covered by

[13] Id., pp. 1075, 1077, 1078.

tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, *extends seaward (or into the Gulf of Mexico) beyond three geographical miles.*"

Further, the term "boundaries" is defined in Section 2(b) of the act as follows:

"the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than *three marine leagues into the Gulf of Mexico.*"

Finally, Section 4 of the Act provides:

". . . Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary *beyond three geographical miles* if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

A careful examination of the committee hearings and the extended debates on this legislation will reveal that

proponents and opponents alike were in agreement that the effect of the bill would be to restore to Texas the submerged lands *three leagues* from shore, because there was no dispute about the fact that the Texas Gulfward boundary was at such distance "at the time such State became a member of the Union."

Twice on the Senate floor amendments were offered to limit the effect of the bill to 3 miles for each State. On both occasions Senator Daniel of Texas presented the undisputed evidence that Texas' Gulfward boundary has existed at 3 leagues since 1836, and the 3 mile amendments were defeated.[16]

Once in the House a similar 3 mile amendment was offered, and after Congressman Wilson of Texas explained the Texas 3 league boundary, the 3 mile amendment was defeated by a vote of 83 to 17.[17]

It seems obvious that the recognition of Texas' 3 league boundary by President Polk (and his promise to defend it as part of the annexation negotiations), by the Congress of the United States, by President Eisenhower, and in the Treaty of Guadalupe Hidalgo are of far greater force and effect than a 1956 letter by Secretary of State Dulles declaring this country's general adherence to a 3 mile rule of territorial waters.

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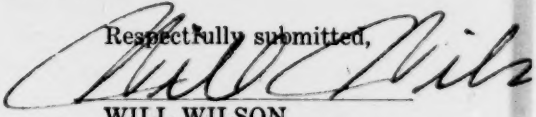
[16] Cong. Rec. April 29, 1953, pp. 5318-4323; Cong. Rec., May 5, 1953, pp. 4635-4636.

[17] Cong. Rec., March 31, 1953, pp. 2567-2569.

CONCLUSION

The Court's decision in this case should be limited to the State of Louisiana. In no event is it necessary for the Court to apply a general rule of boundary which would question or fail to recognize Texas' long established three league boundary in the Gulf of Mexico in a proceeding to which the State is not a party.

Respectfully submitted,



WILL WILSON
Attorney General of Texas

JAMES H. ROGERS
Assistant Attorney General

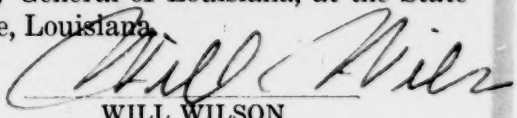
PRICE DANIEL
Governor of Texas

J. CHRIS DOUGHERTY
Austin, Texas

Of Counsel

PROOF OF SERVICE

I, Will Wilson, Attorney General of Texas, certify that I have mailed copies of the foregoing Motion and Brief to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington, D. C. and to Honorable Jack P. F. Gremillion, Attorney General of Louisiana, at the State Capitol, Baton Rouge, Louisiana.



WILL WILSON